No. 231.

UNITED STATES CIRCUIT COURT OF APPEALS,

FOR THE NINTH CIRCUIT.

JOHN HAMMOND,

Plaintiff in Error,

vs.

STOCKTON COMBINED HARVESTER AND AGRICULTURAL WORKS,

Defendant in Error.

TRANSCRIPT OF RECORD.

In Error to the Circuit Court of the United States for the Northern District of California.

INDEX.

In the Circuit Court of the United States for the Northern District of California.

Of the November Term, a. d. 1891.

United States of America, Northern District of California. } ss.

Declaration, Trespass on Case.

John Hammond, plaintiff in this action, by Langhorne & Miller, his attorneys, complains of The Stockton Combined Harvester and Agricultural Works, defendant therein, of a plea of trespass on the case.

For that at all times herein mentioned, said defendant, was and is a corporation organized and existing under and by virtue of the laws of the State of California, and having its principal place of business at the City of Stockton, County of San Joaquin, State of California, in the Northern District of California.

And for that heretofore, to-wit: prior to June 22nd, 1891, said plaintiff John Hammond, by his own industry, genius, efforts and expense, invented and produced a new and original design for a manufacture, to-wit: a new, useful, and original shape and configuration of a car body; that the same consisted and does consist in a car body distinguished by its peculiar shape and configuration, having a central, rectangular, enclosed compartment or section, and at each end thereof symmetrically arranged skeleton or open work rectangular sections, within which are delineated seats lying lengthwise and crosswise of the car, the whole being surmounted by a horizontal roof surface, while

at each end of the car floor is a vertical dasher, and beneath the flooring are seen the trucks, the whole of the aforesaid car body being suitably ornamented or embellished, all of which will more fully and at large appear from the letters patent therefor, hereinafter mentioned.

And for that said design had not been known or used by others before the invention or production thereof by said plaintiff, nor patented, nor described in any printed publication, nor had the same been in use in this country for two years prior to the application for a patent therefor by said plaintiff hereinafter mentioned.

And for that thereafter, to-wit: on June 22nd, 1891, said plaintiff made application to the Commissioner of Patents of the United States for the issuance to him of letters patent for said design, and in said application, elected the term of fourteen years as the term of such letters patent as might be granted to him on said application, and for that such proceedings were duly and regularly had and taken in the matter of said application, that thereafter, to-wit: On September 15th, 1891, letters patent of the United States for said design were issued and delivered to said plaintiff, John Hammond, granting and securing to him, his heirs and assigns, for the full term of fourteen years from said last-named day the exclusive right to make, use and vend the said design throughout the United States of America and the Territories thereof.

And for that said letters patent were issued in due form of law, under the seal of the Patent Office of the United States, and were signed by the Secretary of the

Interior, and countersigned by the Commissioner of Patents of the United States and are numbered 21,042 and bear date September 15th, 1891, all of which will more fully appear from said letters patent, which are ready to be produced in court by the plaintiff, and of which proffert is hereby made.

And for that prior to the issuance of said letters patent, all proceedings were had and taken that are required by law to be had and taken prior to the issuance of letters patent for designs.

And for that, ever since the issuance of said letters patent, said plaintiff has been, and is now, the owner and holder of said letters patent and all of the rights, liberties and privileges by them granted.

Yet, notwithstanding the premises, and well knowing the same, and in violation of the plaintiff's exclusive rights as aforesaid, at the City of Stockton and elsewhere in the State of California and northern district thereof, since the 15th day of September, 1891, the said defendant did apply the design secured by said letters patent and colorable imitations thereof to articles of manufacture, to-wit: car bodies, for the purpose of sale, and did sell and expose for sale, articles of manufacture, to-wit: car bodies to which said design and colorable imitations thereof had been applied by said defendant without the license of the plaintiff, all contrary to law and the statutes of the United States in that behalf made and provided, whereby plaintiff has been greatly injured and damaged, and has sustained actual damage in a large sum, to-wit: $10,000.

Wherefore, by force of the statutes of the United States, a right of action has accrued to the plaintiff to recover the said actual damages and such additional sum, not exceeding three times the amount at which said actual damages may be assessed, besides the costs of this action.

Yet the defendant, though often requested, has never paid the same, nor any part thereof, but has refused, and still refuses so to do, and therefore plaintiff brings this action.

LANGHORNE & MILLER,
Plaintiff's Attorneys.

[Endorsed]: Filed November 23, 1891. L. S. B. Sawyer, Clerk.

UNITED STATES OF AMERICA.

Circuit Court of the United States, Ninth Circuit, Northern District of California.

JOHN HAMMOND, Plaintiff, vs. STOCKTON COMBINED HARVESTER AND AGRICULTURAL WORKS (a Corporation), Defendant.	Action brought in the said Circuit Court, and the Declaration Filed in the Office of the Clerk of the said Circuit Court, in the City and County of San Francisco.

Summons.

The President of the United States of America, Greeting, to Stockton Combined Harvester and Agricultural Works (a Corporation), Defendant:

You are hereby required to appear in an action brought against you by the above-named plaintiff, in the Circuit Court of the United States, Ninth Circuit, in and for the Northern District of California, and to file your plea, answer or demurrer, to the declaration filed therein (a certified copy of which accompanies this summons), in the office of the clerk of said court, in the City and County of San Francisco, within ten days after the service on you of this summons—if served in this county; or if served out of this county, then within thirty days—or judgment by default will be taken against you.

The said action is brought to recover $10,000 damages alleged to have been sustained by plaintiff by reason of the infringement by you upon a certain design patent for a car body issued to the plaintiff by the government of the United States on September 15, 1891, and numbered 21,042 for 14 years, and also for costs, all of which will more fully appear from the declaration on file, to which reference is hereby made, and if you fail to appear and plead, answer or demur, as herein required, your default will be entered and the plaintiff will apply to the Court for the relief demanded.

Witness, the Honorable MELVILLE W. FULLER, Chief Justice of the Supreme Court of the United States, this 23rd day of November, in the year of our Lord one thousand eight hundred and ninety-one and of our Independence the 116th.

(Seal.) L. S. B. SAWYER,
Clerk.

UNITED STATES MARSHAL'S OFFICE,
Northern District of California.

I hereby certify that I received the within Writ on the 23d day of Nov., 1891, and personally served the same on the 24th day of Nov., 1891, on Stockton Combined Harvester and Agricultural Works, by delivering to and leaving with Wm. Ingles, President of the Stockton Combined Harvester and Agricultural Works, said defendant named there personally, at the City of Stockton, and County of San Joaquin, in said district, a certified copy thereof, together with a copy of the complaint certified to by plaintiff's attorneys. San Francisco, Nov. 25th, 1891. W. G. Long, U. S. Marshal. By A. A. Wood, Deputy.

[Endorsed]: Summons. Langhorne & Miller, Plaintiff's Attorneys. Filed November 25, 1891. L. S. B. Sawyer, Clerk.

In the Circuit Court of the United States, Ninth Circuit, in and for the Northern Disirict of California.

JOHN HAMMOND,
Plaintiff,
vs.
STOCKTON COMBINED HARVESTER AND AGRICULTURAL WORKS (a Corporation),
Defendant.

Answer.

Comes now this said defendant and denies generally and specifically each and every allegation contained in plaintiff's complaint herein, and says that it is not

guilty of the grievances therein charged against it, or either of them, or any part thereof, and of this the defendant puts itself upon the country.

Wherefore, defendants demands judgment for its costs.

REDDY, CAMPBELL & METSON,
Attorneys for Defendant.

[Endorsed]: Due service of within Answer admitted this 25th day of February, 1892. Langhorne & Miller, Attorneys for Plaintiff. Filed Feb. 25, 1892. L. S. B. Sawyer, Clerk. By W. B. Beaizley, Deputy Clerk.

In the Circuit Court of the United States, in and for the Northern District of California, Ninth Circuit.

JOHN HAMMOND,
Plaintiff,
vs.
STOCKTON COMBINED HARVESTER AND AGRICULTURAL WORKS (a Corporation),
Defendant.
No. 11,524.

Amended Answer.

The Stockton Combined Harvester and Agricultural Works, the defendant above named, having first obtained leave of the Court, files this, its amended answer to the complaint of John Hammond, plaintiff herein.

Defendant denies generally and specifically all and singular, each and every allegation in said complaint contained.

And for a further and separate defense to this action defendant denies that the plaintiff herein has or owns, any valid United States letters patent for a design for a new and useful and original shape and configuration of a car body, and if any such a patent was ever issued to said plaintiff by the United States Patent Office, such pretended letters patent are void.

Defendant further says that said pretended Letters Patent Numbered 21,042, and bearing date September 15th, 1891, are void, because the alleged invention pretended to be covered by said patent is not the subject of a Design patent, and there was not at the time of its issue any warrant of law for the issue of a Design patent for said invention. That if said pretended letters patent contain the description of any invention whatever, it is the description of a mechanical or functional invention and not a design, and the Commissioner of Patents exceeded his authority in issuing said pretended letters patent.

Defendant further says that said alleged letters patent for a design for a car is void because it involves no invention. That it is only the double use of what was shown and patented by W. H. T. Hughes in his United States Letters Patent, No. 134,560, dated December 17th, 1872.

Defendant further says that the alleged invention described and claimed in said pretented letters patent is not now, and was not at the time of the issue of said pretended patent a statutory subject of a design patent.

For a further special defense defendant says that said pretended invention described in, and attempted

to be protected by said pretended letters patent was not an invention, but was a mere exercise of ordinary judgment within the skill of any common sense person. That it required no skill, or genius, or manual dexterity in designing or drawing beyond that possessed by any skilled draughtsman.

Defendant further says that said alleged letters patent are void, because the description of the design contained in the specification is not in such full, clear, concise and exact terms as to enable any person skilled in the art or science to which it appertains, or with which it is most nearly connected to understand what design is intended or contemplated to be covered and protected thereby.

For a further special defense defendant says and hereby gives notice that he will prove on the trial of this case that said pretended invention or design was not novel at the time of its alleged invention, but that substantially the same design, arrangement and combination, or parts constituting a car body, had been made and used by others in this county more than two years prior to the application of said plaintiff for said alleged letters patent. That substantially the same design and combination of parts constituting a car body was made, used and sold more than two years prior to the date of plaintiff's application for said alleged letters patent by the J. G. Brill Company, (a corporation), doing business in Philadelphia, Pennsylvania, and whose shop and office is at Sixty Second street and Woodland avenue, in Philadelphia, Pennsylvania.

That Carter Brothers, Car Manufacturers, at San Francisco, California, and whose office is at 42 Market street, in San Francisco, California and whose works are at Newark, California, made and used at their said factory a design for cars, of substantially the same character and design as that described and claimed in said pretended letters patent, more than two years prior to the date of plaintiff's application for said alleged letters patent. That cars of a similar and substantially the same kind, character and design made by said Carter Brothers were in use on the Alameda Electric Railroad long prior to the pretended invention of the plaintiff herein, and on various other roads in the State of California and elsewhere.

That the defendant herein, at its works in Stockton, California, designed, devised, planned and constructed a design for street cars, of substantially the same style, character and design as that shown in said alleged letters patent, more than two years prior to the alleged invention thereof by the plaintiff herein. That cars, of substantially the same design and construction, planned and designed by defendant at its said factory, and built at its said factory in Stockton, California, were used by the Oakland and Berkeley Rapid Transit Company at Oakland, California.

By the Portland Cable Railway Company at Portland, Oregon;

By the James Street Construction Company at Seattle, Washington; and

By Jacob Rich at San Jose, California.

That a design for cars, of substantially the same style, construction and design, were made and used by various other parties in the United States more than

two years prior to plaintiff's alleged invention thereof, whose names and addresses defendant cannot now state, but he asks leave to insert the same when it shall have discovered the same.

And defendant will further show on the trial of this case, that substantially the same construction, plan and design for a car was patented in the United States, by W. H. T. Hughes, of Brooklyn, New York, on the 17th day of December, 1872, and the number of his said Letters Patent is 134,560.

And defendant will further show at said trial that the plaintiff abandoned his right to claim the said design for cars, if he ever had such right, by allowing cars of substantially the same style, character and design, to be publicly, extensively and notoriously used in various and numerous parts of the country without asserting any right or claim thereto, and without applying for a patent for said design for more than one year after cars of substantially the same design as that claimed in said alleged letters patent, was so publicly and notoriously used, and within his knowledge and under his own sight and vision.

Defendant will further show that plaintiff obtained said alleged letters patent by fraud. That he was well aware at the time he made and filed his said application for a patent for said design that he was not the designer or inventor thereof, and that cars of substantially the same style and design, had been in extensive, public and notorious use for more than a year prior to his making his application for said design patent, and that the same had been designed by others, but desiring and designing to perpetrate a fraud upon the public and car builders in the United

States, he made and filed his said application, knowing that should such application be granted the said prior designers and builders would be required to prove and show that said design was made and used more than two years prior to his application for a patent, in order to defeat said pretended patent.

Wherefore, defendant prays judgment that this action may be dismissed with costs.

JOHN L. BOONE and
REDDY, CAMPBELL & METSON
Attorneys for Defendant.

JNO. L. BOONE,
Of Counsel.

[Endorsed]: Service of within is hereby admitted this 22d day of July, 1892. Estee, Fitzgerald & Miller, Attorneys for Plaintiff. Filed July 23, 1892. L. S. B. Sawyer, Clerk.

UNITED STATES OF AMERICA.

In the Circuit Court of the United States, Ninth Judicial Circuit, Northern District of California.

JOHN HAMMOND, Plaintiff,
vs.
STOCKTON COMBINED HARVESTER AND AGRICULTURAL WORKS, Defendant.
No. 11,524.

Verdict.

We, the jury, find in favor of the plaintiff, and assess the damages at the sum of two hundred and fifty dollars.

C. A. MERRILL,
Foreman.

[Endorsed]: Filed Dec. 20, 1893. W. J. Costigan, Clerk. By W. B. Beaizley, Deputy Clerk.

UNITED STATES OF AMERICA.

Circuit Court of the United States, Ninth Circuit, Northern District of California.

JOHN HAMMOND,
Plaintiff,
vs.
STOCKTON COMBINED HARVESTER AND AGRICULTURAL WORKS,
Defendant.

Memorandum of Costs and Disbursements.

DISBURSEMENTS.

Marshal's fees	$25 00
Clerk's fees	13 40
" " (accrued)	12 50
½ Stenographer's per diem	10 00
Docket fee	20 00
Affidavit hereto	25
Total	$81 15

Taxed and allowed this 26th day of September, 1893, by consent, at $81.15.

W. J. COSTIGAN,
Clerk.

UNITED STATES OF AMERICA,
Northern District of California,
City and County of San Francisco. } ss.

J. H. Miller being duly sworn, deposes and says: That he is the attorney for the plaintiff in the above-entitled cause, and as such is better informed, relative to the above costs and disbursements than the said plaintiff. That the items in the above memorandum contained are correct to the best of this deponent's knowledge and belief, and that the said disbursements have been necessarily incurred in the said cause.

J. H. MILLER.

Subscribed and sworn to before me this 22nd day of Dec. A. D., 1893.

W. B. BEAIZLEY,
Commissioner of U. S. Circuit Court, Northern District of California.

[Endorsed]: To John L. Boone & Reddy, Campbell & Metson, Attys. for Defendant. You will please take notice that on Tuesday the 26th day of December A. D., 1893, at the hour of 10:30 o'clock A. M., we will apply to the clerk of said court to have the within memorandum of costs and disbursements taxed pursuant to the rule of said court, in such case made and provided. Estee & Miller, Attorneys for Plaintiff. Service of within memorandum of costs and disbursements, and receipt of a copy thereof acknowledged this 22d day of Dec. A. D., 1893. Jno. L. Boone, Attorney for Defendant. Filed this 22d day of December, A. D., 1893, W. J. Costigan Clerk.

At a stated Term, to-wit: the November Term, A. D. 1893, of the Circuit Court of the United States of America, for the Ninth Judicial Circuit, in and for the Northern District of California, held at the courtroom in the City and County of San Francisco, on Wednesday the 20th day of December in the year of our Lord, one thousand eight hundred and ninety-three.

Present: The Honorable JOSEPH MCKENNA, Circuit Judge.

JOHN HAMMOND, Plaintiff,
vs.
STOCKTON COMBINED HARVESTER AND AGRICULTURAL WORKS (a Corporation), Defendant. } No. 11,524.

Judgment on Verdict.

This cause came on regularly for trial. The said parties appeared by their attorneys. Jno. H. Miller, Esq., appearing for plaintiff, and Jno. L. Boone, Esq., appearing for defendant. A jury of twelve persons was regularly empaneled and sworn to try said cause. Witnesses on the part of the plaintiff and defendant were sworn and examined. After hearing the evidence, the arguments of counsel and instructions of the Court, the jury retired to consider of their verdict and subsequently returned into court, and being called all answered to their names, and presented the following verdict:

United States of America, Circuit Court of the United States, Ninth Judicial Circuit, Northern District of California. John Hammond, Plaintiff, vs. Stockton

Combined Harvester and Agricultural Works, Defendant. We, the jury, find in favor of the plaintiff, and assess the damages at the sum of two hundred and fifty dollars.

C. A. MERRILL,
Foreman.

Wherefore, by virtue of the law, and by reason of the premises aforesaid, it is ordered, adjudged and decreed, that said plaintiff, John Hammond, have and recover from said defendant, the Stockton Combined Harvester and Agricultural Works, the sum of two hundred and fifty dollars, together with said plaintiff's costs and disbursements incurred in this action, amounting to thesum of $81.15.

Entered this 20th day of December, A. D. 1893.

W. J. COSTIGAN,
Clerk.

A true copy. Attest:

W. J. COSTIGAN,
Clerk.

[Endorsed]: Filed Dec. 20th, 1893. W. J. Costigan, Clerk.

In the Circuit Court of the United States, Ninth Judicial Circuit, in and for the Northern District of California.

JOHN HAMMOND,
vs.
STOCKTON COMBINED HARVESTER AND AGRICULTURAL WORKS (a Corporation). } No. 11,524.

Certificate to Judgment Roll.

I, J. W. Costigan, Clerk of the Circuit Court of the United States, for the Ninth Judicial Circuit, Northern District of California, do hereby certify that the fore-

going papers hereto annexed constitute the Judgment Roll in the above entitled action.

Attest my hand and the seal of said Circuit Court, this 20th day of December, 1893.

(Seal.) W. J. COSTIGAN,
Clerk.

[Endorsed]: Judgment Roll. Filed December 20th, 1893. W. J. Costigan, Clerk.

In the Circuit Court of the United States, in and for the Northern District of California, Ninth Circuit.

JOHN HAMMOND, Plaintiff, vs. STOCKTON COMBINED HARVESTER and AGRICULTURAL WORKS (a Corporation), Defendant.	No. 11,524.

Notice of Motion for New Trial.

To the plaintiff and Messrs. Estee & Miller, his attorneys:

You will please take notice that the defendant herein will move this Honorable Court, at the court-room of said Court on the Northeast corner of Washington and Sansome streets, in San Francisco, California, on Monday the 15th day of January, A. D. 1894, at the hour of 11 o'clock in the forenoon of said day, or as soon thereafter as counsel can be heard, to set aside and vacate the verdict of the jury heretofore rendered and entered in said case, and to grant a new trial thereof.

Said motion will be made upon the following grounds, to-wit:

(1.) Errors in law occurring at the trial and excepted to by said defendant.

(2.) Insufficiency of the evidence to justify the verdict or the decision or the judgment.

(3.) That said verdict and said decision and said judgment are against law.

(4.) Error of the Court in refusing to instruct the jury to render a verdict in favor of the defendant.

Said motion will be made on the minutes of the court, and the pleadings and proceedings on file in the Clerk's office.

Dated this 26th day of December, 1893.

REDDY, CAMPBELL & METSON, and
JNO. L. BOONE,
Attorneys for Defendant.

[Endorsed]: Service of within Notice admitted this 26th day of December, 1893. Estee & Miller, Attorneys for Plaintiff. Filed Dec. 27, 1893. W. J. Costigan Clerk. By W. B. Beaizley, Deputy Clerk.

At a stated Term, to-wit: the July Term, A. D. 1894, of the Circuit Court of the United States of America, of the Ninth Judicial Circuit, in and for the Northern District of California, held at the court-room, in the City and County of San Francisco, on Monday, the 23rd day of July, in the year of

our Lord one thousand eight hundred and ninety-four.

Present: The Honorable JOSEPH MCKENNA, Circuit Judge.

JOHN HAMMOND,
vs.
STOCKTON COMBINED HARVESTER AND AGRICULTURAL WORKS (a Corporation). No. 11,524.

Order Granting Motion for New Trial.

In this cause it is ordered that the motion for a new trial heretofore argued and submitted to the Court be, and the same is hereby granted.

In the Circuit Court of the United States, in and for the Northern District of California.

JOHN HAMMOND,
Plaintiff,
vs.
STOCKTON COMBINED HARVESTER AND AGRICULTURAL WORKS (a Corporation),
Defendant. No. 11,524.

Findings.

This cause came on for trial on the 20th day of March, A. D. 1895, before the Court sitting without a jury, a jury having been duly waived by the parties. J. H. Miller, Esq., appeared as attorney for the plaintiff, and John L. Boone, Esq., appeared as attorney for defendant; and the cause having been tried, argued and submitted to the Court for its consideration and

decision, and special findings of fact having duly considered the case, finds the following as special findings of fact, in the case, to-wit:

I.

That at all the times mentioned in the pleadings the defendant was a corporation organized and existing under and by virtue of the laws of the State of California, and having its principal place of business at the city of Stockton, in the county of San Joaquin, State of California, in the Northern District of California.

II.

That heretofore, to-wit: Prior to June 22nd, 1891, plaintiff, John Hammond, by his own industry, genius, efforts and expense, conceived, devised and produced a new and original design for a manufacture, to-wit: a new, useful and original shape and configuration of a car body; that the same consisted and does consist of a car body distinguished by its peculiar shape and configuration, having a central rectangular enclosed compartment or section, and at each end thereof, symmetrically arranged, skeleton or open work rectangular sections, within which are delineated seats, lying lengthwise and crosswise of the car, the whole being surmounted by a horizontal roof surface, while at each end of the car floor is a vertical dasher, and beneath the flooring are seen the trucks; the whole of the aforesaid car body being suitably ornamented or embellished. All of which more fully and at large appears from the letters patent issued therefor and referred to in the pleadings herein, which said

letters patent are hereby referred to and by such reference made a part hereof.

III.

That the said design had not been known or used by others before the conception, devising and production thereof by said plaintiff, nor patented nor described in any printed publication; nor had the same been in use in this country for two years prior to the application for a patent therefor by said plaintiff.

IV.

That thereafter, to-wit: on June 22nd, 1891, said plaintiff made application to the Commissioner of Patents of the United States for the issuance to him of letters patent for said design, and in said application elected the term of 14 years as the term of such letters patent as might be granted to him on the said application; that such proceedings were duly and regularly had and taken in the matter of said application; that, thereafter, to-wit: on September 15th 1891, letters patent of the United States were issued and delivered to plaintiff for said design, purporting to grant and secure to him, his heirs and assigns, for the full term of fourteen years from said last named day, the exclusive right to make, use and vend the said design throughout the United States of America, and the territories thereof.

V.

That said letters patent were issued in due form of law, under the seal of the Patent Office of the United

States, and were signed by the Secretary of the Interior and countersigned by the Commissioner of Patents of the United States, and are numbered 21,042, and bear date September 15th, 1891.

VI.

That prior to the issuance of said letters patent, all proceedings were had and taken in the Patent Office, which are required by law to be had and taken prior to the issuance of letters patent for designs.

VII.

That ever since the issuance of said letters patent, the plaintiff has been and is now the owner and holder of said letters patent, and of all the rights, liberties and privileges by them granted, and has made and sold the car bodies described and claimed in said patent, and has always marked on each one thereof, the word patented, with the date and number of his said patent.

VIII.

That notwithstanding the premises, and well knowing that the plaintiff had secured said letters patent, and in violation of the exclusive rights claimed thereunder, by the plaintiff, said defendant, at the City of Stockton, and elsewhere in the State of California, and northern district thereof, since the 15th day of September, 1891, did apply the design described and claimed in said letters patent, and colorable imitations thereof, to articles of manufacture, to-wit: car bodies, for the purpose of sale, and did sell and expose for sale said articles of manufacture, to-wit: car bodies,

to which said design and colorable imitations thereof had been applied by said defendant without the license of plaintiff; whereby plaintiff was greatly injured and damaged, and sustained damages in the sum of two hundred and fifty dollars.

But in this behalf, the Court further finds that the said acts of the defendant were not in violation of any exclusive rights under said letters patent, claimed by the plaintiff, nor in violation of any rights of the plaintiff under said letters patent, by reason of the fact that the said letters patent were and are void for want of invention displayed and exercised in producing the design described and claimed in said letters patent.

IX.

That, prior to the date of plaintiff's alleged invention, there was known and in use on the Market street Cable Road, in the City and County of San Francisco and State of California, a combination car consisting, of a rectangular enclosed compartment or section, and at one end thereof a skeleton or open-work rectangular section, within which were delineated seats lying lengthwise and crosswise of the car, while at the opposite end was an ordinary car platform for ingress and egress of passengers, the whole being surmounted by a horizontal roof surface, while at each end of the car floor was a vertical dasher, and beneath the flooring were seen the trucks, the whole of said car body being suitably ornamented and embellished, the appearance of which is shown by Letters Patent No. 304,863, granted to H. Root, on September 9th, 1884, a copy of which was offered in evidence by the plain-

tiff, and marked Plaintiff's Exhibit "I I," and is hereby referred to for further description.

That in producing his car body described and claimed in letters patent sued on, all that the plaintiff did was to take the said old Market street combination car, cut a passage-way through the side-seats of the open compartment adjoining the closed compartment, so as to afford an entrance from the street through the said open compartment to the enclosed compartment; then to remove the rear platform attached to the open compartment, and substitute in its place an open compartment, with seats and passage-ways in all respects like the first-mentioned open compartment, and that in making said substitution, trucks were placed underneath said substituted open compartment, in all respects like the trucks which had previously been used under said prior open compartment.

That long prior to said substitution, horse-cars had been used in which were a central closed compartment with a platform at each end with passage-ways for ingress and egress of passengers from said central closed compartment to each of said platforms, and from thence to the street.

And as a conclusion of law, from the foregoing facts, the Court finds:

That the said letters patent for a design for car-bodies referred to herein, are void for want of invention, and that the defendant is entitled to judgment for costs of suit; and it is ordered that judgment be entered accordingly.

To which decision and findings, the plaintiff duly excepts, and his exception in that behalf is hereby allowed.

JOSEPH McKENNA,
Judge.

Dated: April 10th, A. D., 1895.

[Endorsed]: Filed April 10, 1895. W. J. Costigan, Clerk. By W. B. Beaizley, Deputy Clerk.

UNITED STATES OF AMERICA.

In the Circuit Court of the United States, Ninth Circuit, Northern District of California.

JOHN HAMMOND,
Plaintiff,
vs.
STOCKTON COMBINED HARVESTER AND AGRICULTURAL WORKS (a Corporation),
Defendants.
No. 11,524.

Judgment on Findings.

This cause came on regularly for trial, the parties appearing by their attorneys. A trial by jury having been expressly waived by stipulation signed by counsel for the respective parties and filed herein, the cause was tried before the Court, whereupon witnesses on the part of plaintiff and defendant were introduced, sworn and testified; the evidence being closed the cause was submitted to the Court for consideration and decision, and after due deliberation thereon, the Court delivers its findings and decision in writing, which is filed, and orders that judgment be entered in accordance therewith.

Wherefore, by virtue of the law and the findings aforesaid, it is ordered, adjudged and decreed that said defendants the "Stockton Combined Harvester and Agricultural Works" have and recover from said plaintiff "John Hammond," said defendants' costs and disbursements incurred in this action, amounting to the sum of $.....

Entered this 22d day of April A. D., 1895.

W. J. COSTIGAN,
Clerk.

A true copy, Attest:

W. J. COSTIGAN,
Clerk.

In the Circuit Court of the United States, Ninth Judicial Circuit, in and for the Northern District of California.

JOHN HAMMOND,
Plff.,
vs.
STOCKTON COMBINED HARVESTER AND AGRICULTURAL WORKS (a Corporation),
Defts.
No. 11,524.

Certificate to Judgment Roll.

I, W. J. Costigan, Clerk of the Circuit Court of the United States, for the Ninth Judicial Circuit, Northern District of California, do hereby certify that the foregoing papers hereto annexed constitute the Judgment Roll in the above-entitled action.

Attest my hand and the seal of said Circuit Court this 22d day of April, 1895.

(Seal.) W. J. COSTIGAN,
Clerk.

[Endorsed]: Judgment Roll. Filed 22d April, 1895. W. J. Costigan, Clerk.

In the Circuit Court of the United States, Ninth Judicial Circuit, in and for the Northern District of California.

JOHN HAMMOND,
Plaintiff,
vs.
STOCKTON COMBINED HARVESTER AND AGRICULTURAL WORKS (a Corporation),
Defendant.

Bill of Exceptions.

Be it remembered that the above-entitled cause came on regurlarly for trial, on the 20th day of March, 1895, before the above-entitled Court sitting without a jury, a trial by jury having been duly waived, J. H. Miller, Esq., appearing as attorney for the plaintiff, and John L. Boone, Esq., for the defendant; and thereupon the following proceedings were had:

In order to sustain the issues made in his behalf, the plaintiff offered in evidence, letters patent of the United States sued on, being Letters Patent No. 21,042, dated September 15th, 1891, the application

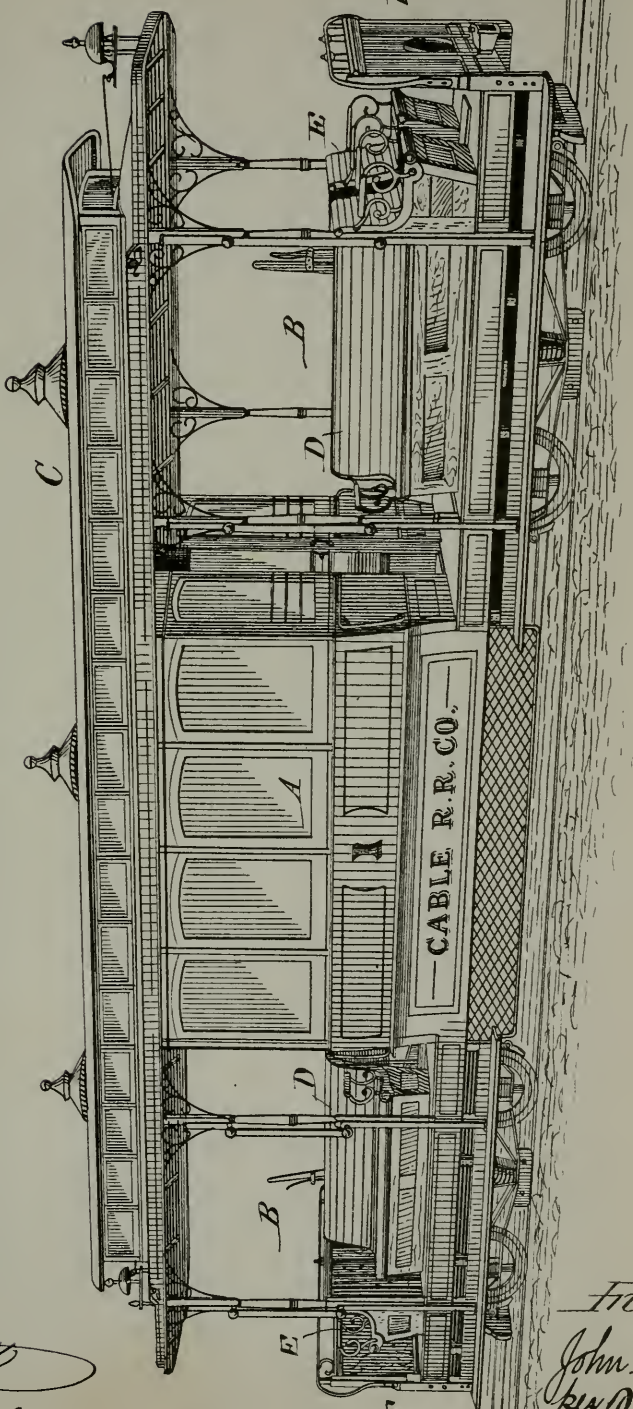
for which was filed on June 22nd, 1891, entitled a "design for railway car body," issued to John Hammond, which said letters patent are in words and figures following, to-wit: and are marked "Exhibit A."

DESIGN.

J. HAMMOND.

RAILWAY CAR BODY.

No. 21,042. Patented Sept. 15, 1891.



Plaintiff's Exhibit A

Attest:

F. H. Ekhott

Wm. L. Boyden

Invent.

John Hamm

per Fred. E. Foss

UNITED STATES PATENT OFFICE.

JOHN HAMMOND, OF SAN FRANCISCO, CALIFORNIA.

DESIGN FOR A RAILWAY CAR-BODY.

SPECIFICATION forming part of Design No. 21,042, dated September 15, 1891.

Application filed June 22, 1891. Serial No. 397,148. Term of patent 14 years.

To all whom it may concern:

Be it known that I, JOHN HAMMOND, a citizen of the United States, residing in the city and county of San Francisco, and State of California, have invented and produced a new and original Design for a Car-Body; and I do hereby declare the following to be a full, clear, and exact description of the same, such as will enable others skilled in the art to which it appertains to make and use the invention.

The design relates to a car-body; and it consists in a car-body distinguished by its peculiar shape, which will be hereinafter set forth and claimed.

In the annexed drawing I have shown a perspective view of the car-body.

My newly-designed car-body has a central section A, which is represented as an inclosed rectangular compartment, at the ends of which are door-openings and along the sides of which are window-openings, the said ends and sides being suitably ornamented or embellished, as represented, and suitable guard-rails being shown thereon. At each end of the said closed section is a skeleton or open work section B, the two sections B B being alike in form or appearance and symmetrically disposed or arranged. Surmounting the central and end sections is a horizontal roof or covering C, extending the full length of the series of sections. Within the skeleton sections B B, I have represented seats, of which seat D is shown parallel to the side of the car, and seat E is shown at right angles thereto or parallel to the end of the car. Beneath the several sections is delineated the flooring, and near each end of the car the trucks are visible beneath the flooring and behind the steps which lie alongside the outer edge of the said flooring. On each end of the flooring or platform is seen an upright dasher F, surmounted by a railing.

What I claim is—

The herein-described design for a car-body, consisting of a central rectangular inclosed compartment or section and at each end thereof symmetrically arranged skeleton or open-work rectangular sections, within which are delineated seats lying lengthwise and crosswise of the car, the whole being surmounted by a horizontal roof-surface, while at each end of the car-floor is a vertical dasher and beneath the flooring are seen the trucks, the whole of the aforesaid car-body being suitably ornamented or embellished, substantially as shown and described.

In testimony whereof I have hereunto affixed my signature in the presence of two witnesses.

JOHN HAMMOND.

Witnesses:

ALFRED A. ENQUIST,

W. D. BENT, JR.

John Hammond, being called as a witness was duly sworn, and testified as follows:

That he was the John Hammond mentioned in the said letters patent (Exhibit "A"), and was the inventor of the invention therein shown.

Here the witness produced a photograph of a double-ender cable car, which was offered and admitted in evidence and marked Exhibit "B," and is now on file with the papers in the case, and hereby referred to, and by such reference made a part of this bill of exceptions.

And further testifying, the witness said:

This is the photograph of the first car that I constructed, and put on the California street Cable Railroad and tested in this city and county. I have built for the California Cable Railway forty or forty-five cars of that pattern, and they have been put in use and operated on said road.

Here the witness was handed another photograph of the double-ender cable car, and testified in regard to the same as follows:

That is a cable car I constructed, the same as the first photograph, only it is taken more in perspective. That photograph was taken from the car running on Alder street, in the City of Portland. That is a correct photograph of it. The name of the Stockton Combined Harvester and Agricultural Works was on that car as the builder.

The photograph was then offered in evidence and marked Exhibit "C," the same being on file with the papers in the case, is hereby referred to, and by such reference made a part of this bill of exceptions.

The witness continuing, testified as follows:

The car shown in this photograph, Exhibit "C," is precisely the same in construction and appearance as my car shown in photograph, Exhibit "B." It might be a little shorter, or might be a little longer. In regard to that I do not know. But it is precisely the same in appearance, and operates the same: Cars of this appearance, as shown in this patent, have gone into extensive use. I have seen them in Oakland. I saw the Stockton Combined Harvester and Agricultural Works Company shipping them from their works in Stockton. Cars just like that—two years ago—less or more. They were shipping a large quantity, 10 or 12, to Los Angeles. They were the same in appearance with my car. I saw one on a flat car going out on its way to Los Angeles, and the others I saw in their works at Stockton. Cars of this same general appearance used as electric cars, have been put in use in San Jose and in Oakland, on the Rapid Transit Company to Berkeley, and on several of the cross-town lines. Also on the Consolidated Piedmont Road. Cars of this form have gone into quite extensive use. These cars are of larger carrying capacity and more convenient to the public because the smokers can sit at one end and the ladies at the other, if they so prefer. The exit from the car is much more convenient. For instance, if a truck is going across, passengers can go through the car and get out, and probably save their lives from accident. I notified the defendant in this case that it had been infringing, and to stop infringing. They did not make any direct reply The President and one of the stockholders came to see me

after I sent them a registered letter, looked over my works, talked the matter over and they did not say they would do anything, and went away. After that they continued to make cars of this pattern.

On cross-examination the witness testified as follows:

That his place of business was on Beale street in San Francisco; that he had been engaged in the business of car building for thirty years, building all kinds of cars; the first street cars I ever built was thirteen or fourteen years ago. They were old style horse cars consisting of a closed car with platform at each end; steps leading from the street up to the platform and a door at each end of the car entering the closed body of the car. I remember the cars that were first used on the Market street road in this city after the cable was put in use for propelling cars. That he was the inventor of the invention shown in the patent sued on, that he made the invention some three months or more, if not six months, before he built the first car in October and November, 1890. That the first car was in all particulars like the drawing represented in the letters patent. It was built for the California street Cable Railway Co., and is running on that road now. The "Exhibit B" is the identical photograph taken from that first car.

What I meant when I said this car had gone into use all over the country was that double-ended cars, that is cars having a closed central compartment with an open compartment at each end had gone into use all over the country, that is all I meant. When I testified in my direct examination that I saw some cars shipped from Stockton of this

construction, I referred to double-ender cars. I did not look at the ornamentation, nor the painting. I looked at the car as a double-ender car. All I looked to see was that car had a closed central compartment and an open compartment at either end.

I was acquainted with the cars that were first put in use on the Market street Cable Railway here in this city, known as combination cars. Those cars had a compartment closed at one end, and open at the other. They had a platform at the rear end. The closed compartment had longitudinal seats running inside. There was a door at the forward end to go out where the gripman was, and one at the rear end to go out on the platform. In my car, I made a passage at each end closed in the middle, the dummy at each end, and a passageway to pass out on either end of the car. There was not a passageway in the Market street car at the time for the passengers to get out, but they cut a passageway there since. There was no exit at the forward end for the passengers to get out on the street. The Market street combination cable cars were put in use, I think, in 1883. Prior to the date when I made this invention I had never seen a car with a closed central compartment and an open compartment at either end.

S. W. Elliott, being called as a witness, duly sworn, testified as follows:

That at present he was working in a carriage factory at Pleasanton; that his business was wagon-making; that he worked for the defendant in this case, —went there in July, 1890, and worked until the fall

of 1891, or it might be 1892. That he was superintendent of the works; that while he was there, the defendant manufactured and sold cars like "Exhibit C." That "Exhibit C" was a car that was manufactured by the defendant for the Portland Railway Company; that the defendant manufactured three at the same time for Spokane Falls, of the same pattern; that afterwards they manufactured other cars of the same pattern for electric railways, for the Oakland and Berkeley Rapid Transit Company—they made 8 or 9. For San Jose they made 6. They were manufacturing these cars when he left their employ, and had some in process of construction. That while they were manufacturing these cars, they knew that the plaintiff claimed a patent on it; that matter was talked over in the Board of Directors' meeting while the witness was there; that the cars which the defendant made, had the same general appearance as the photograph, Exhibit "B," and also Exhibit "A."

On cross-examination the witness testified:

That when the defendant commenced to get up designs for its cars, it was reported that an application for patent had been made by the plaintiff; that the witness himself so reported to the Board of Directors of the defendant; that he saw the name of the plaintiff on the California street car, and he heard it on the street that plaintiff had applied for a patent; that was before the defendant commenced to build the cars. That when the defendant commenced to build the double-ender cars, they got the design from the California street cable cars; that the witness took a draughtsman from Stockton, came down to San Fran-

cisco, went into the shed where the California street car was, and sketched the design of it, and from that design, built the cars which are claimed to be an infringement herein.

When I said that the cars which the defendant made had the same general appearance as the photograph Exhibit "B," and also Exhibit "A," I did not take into consideration the ornamentation at all.

Plaintiff here offered in evidence photograph of double-ender cable car, marked "Portland Cable Railway Co.," the same being a photograph of the car built by the defendant and sold to the Portland Cable Railway Co. The same is marked "Exhibit D," and is hereby referred to and by such reference made a part of this bill of exceptions.

The defendant offered in evidence two photographs of double-ender cable cars marked respectively, "Exhibits 1 and 2," which are hereby referred to and by such reference made a part hereof. The defendant then admitted that it had made and sold, prior to the commencement of this suit, and after the date of the plaintiff's patent, double-ended cable cars like those shown in photographs "Exhibits 1 and 2," and "Exhibits D and E."

Plaintiff, John Hammond, being recalled for further examination, testified as follows:

That the car shown and patented in the letters patent sued on, having the design, shape and configuration therein shown, had great utility over and above other cars that are used on cable railways. That in the first place it enabled the railway company to dispense with the use of turn-tables; that in

operation, the car is run to the end of the road, and then is run off on a "Y" or switch on to the other track. The car can be started back without being reversed, end for end, as was usually done before and is now done on some roads. That the car is so constructed in design that there is a place for the gripman or motorman to stand at either end, and the car is worked either way. Those places are at the dummy end of the car, being an open compartment at each end. The gripman takes his place at the forward end, which way he wishes to go, and vice versa when he gets to the other end of the line. The gripping apparatus is operated from one end. That is, the grip is placed there. It is operated from either end. The gripman has to stand at the forward end of the car as it advances along the track, so that he may see and stop the car. There is only one grip, but it is worked from either end. Some think there are two grips, but there is only one, and it is worked from either end. The appearance of the car shows as though there were two grips. There is only a lever, and there is a rod which is attached to the grip-bar and attached to this lever. Going one way, the gripman pushes the grip from him, and coming the other way he pulls it toward him. Those two dummies or open-ended compartments, being constructed as they are in that patent, enables the gripman to operate the car from either end.

"By Mr. Miller. Q. Prior to your invention, what means were used at the terminus of the track to transfer the cars to the opposite track?"

"Mr. Boone—I object to the question as incompetent, irrelevant and immaterial, on the ground that no connection or relation can be traced between the design for a car body and a turn-table at the end of a track. That the turn-table has nothing whatever to do with the design.

Objection overruled and exception noted.

Prior to the time that I make this invention, turn-tables were employed in making the return trip on a cable railway. I know a number of them in San Francisco. The largest one is at the foot of Market street used by the Market street Cable Railway Co. system. It is driven by friction from the power-house, which is very expensive to keep in order. There is machinery to operate that turn-table and it is operated from the power-house by friction.

In using that device, the car is sent back on its return trip by running it onto the turn-table, pulling the lever and throwing on the friction rollers up against the turn-table, it revolves around and turns the car until it comes to the opposite track. Those cars have one dummy and on that dummy the grip-man stands and operates the cars. It has to be turned around for the return trip so that the dummy can be in front. Those turn-tables are very costly in construction. The turn-tables on the Howard and Ellis street lines averaged $7000 each in construction and in the Market street over $25,000, because that one was placed in the mud and piles had to be driven and it is very expensive to keep in repair.

They are all very expensive, both to construct and to operate, because it takes much power to operate

them, a great deal of power. It requires an operator to be stationed there all the time. In reversing a car, such as is shown in my patent, no extra man is required. That is done by the gripman and conductor. The old Clay street Cable Road was the first one constructed in this city, and that was about 1873 or 4, or 5. In making the return trip, they used turn-tables. I built the one for them myself at Clay and Kearney streets. Not the first one, but the second one. The first one wore out, and I put in the second one. I also put in another one at Leavenworth street when they extended the road to Van Ness avenue. The second cable road that was put in operation in San Francisco was the California street. It also used turn-tables at first. They do not use them now, but ceased to use them when they adopted my double-ender cars. The Sutter street Cable Road ran off on a "Y" and brought the dummy around so as to get it in front of the car. They had to unhitch the dummy and carry it back to the other end of the car so as to be in front on the return trip. The California street was also operated in the same way at first. That is, by unhitching the dummy and carrying it around to the front of the car. The Geary street was operated in the same way. They did not turn the dummy around, but just switched it off, that was where the car and the dummy was separate. The value of my patented device over and above the old method of using the turn-table on cable roads, I think would be a saving to the company on a line like the California street or Market street (more for the Market street) of from $25,000 to $30,000 a year. I arrive at that by

the extra power and the men required, for the construction of them and keeping them in repair. That would be for the small turn-table and small cars, but if you take the large turn-table it would be more. You would have to keep a competent man who would probably have from $2.50 to $3.00 a day, and then the power could only be approximated. I would not put the power at less than $5.00 a day for small turn-tables for a single car. I think that would be a low estimate. The power to operate those turn-tables is supplied from the power-house by the rope and friction rollers. I would estimate the wear and tear and expense of repairs at not less than $5,000 a year in using the turn-table plan. And then, of course, there would be the interest on the original investment. The Market St. system is now adopting all double-ended cars for their electric roads; Mission street, Third street and Kearny street, and they are having a large number built for other lines. They have been largely adopted in Oakland, also in San Jose and in Portland. These double-enders met with public favor as soon as they were introduced, and when they were put on the California street road at first, the people would let two cars pass which were not double-enders in order to ride on a double-ender. They showed their preference for the cars in that way. I have built and put in the market a large number of these cars. Always marked them patented with the date and number of this patent, so the public might be informed of it. I am still doing it at the present time. I am now building double-ender cars for Mission street, Third street and Kearny street lines.

On cross-examination, the witness testified:

That his patented invention could be used as well for electric cars as for cable cars, and that the same had been used and adopted extensively by electric roads, for the purpose of avoiding the necessity of the turn-table; and that when that design of a car was used for electric roads, the same advantages existed as when used for cable roads; that the Market-street combination cars, which were in use before the date of his invention, had no passageway from the street through the dummy into the interior of the car; that the seats on the dummy ran from the end of the dummy back to the body of the middle compartment, whereas the patented car had an entrance at each end, which was not the case in the Market street cars; that the patented car accomplished a different result from what had been accomplished by the Market street combination car, having one dummy, in that the patented car could be run in either direction without turning around; that the patented car was the first combination cable car to do this, and that it was a new result never accomplished before; that by a combination car he meant a car where the dummy was permanently attached, and not to the case of a detachable dummy.

Thereupon the plaintiff rested his case.

Defendant, to maintain the issues in its behalf, produced as a witness *Henry Root*, who, after being duly sworn, testified as follows:

That he was a civil engineer of cable railroads, and had been for ten years, and that under his direction had been constructed the original California street

cable road during the year 1877, and subsequently the original Market street system during the year 1882-3; that the Market street system was first put in operation in August, 1883; that the cars used on the Market street road were what is generally known as the combination car, one closed and one open section, having a four-wheeled truck at each end; that the rear, or closed portion, was the same as the usual 16-foot body horse-car, with an extension on the front end of some fourteen feet, made open, the seats facing outward and a narrow passage between the backs of those seats, with a row of vertical posts on the outside in front, and a handle parallel with the post outside of it; with also two cross seats in front. If the rear portion of the plaintiff's car were covered up, the appearance would be very similar to the Market street car, and from one point of view, the appearance of the Market street car would be very similar. Choose a front view at a very small angle with the front wheel, looking at it broadside, it is apparent that the two ends are alike instead of having a platform in the rear.

Plaintiff put in evidence copy of Letters Patent No. 304,863, granted to Henry Root, on September 9th, 1884, marked Plaintiff's Exhibit "I" "I," and proved that the same represented the combination cars which were used on the Market street Cable Road prior to the date of plaintiff's invention, and referred to by the said witness, Henry Root, in his testimony, and also referred to in the findings of fact in this case.

The following is a drawing annexed to the said letters patent, which represents the appearance of the said car, to-wit:

(No Model.) 4 Sheets—Sheet 1.

H. ROOT.

RAILWAY CAR.

No. 304,863. Patented Sept. 9, 1884.

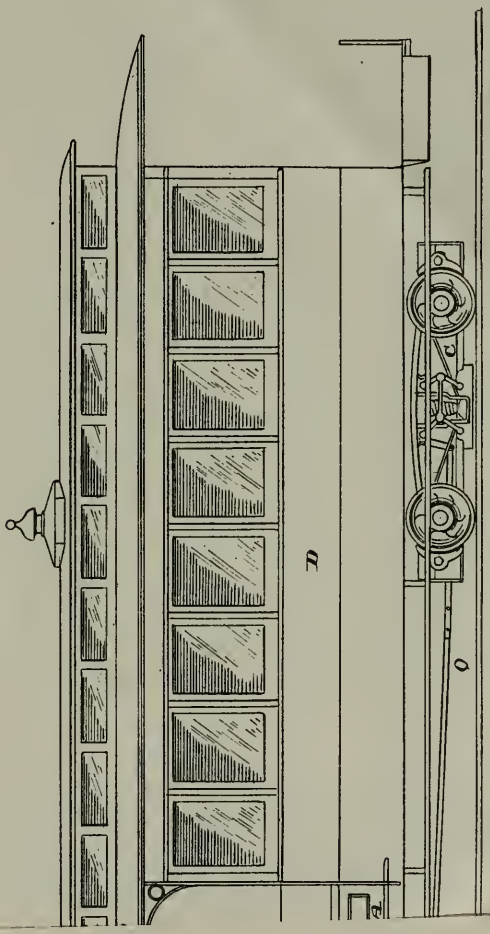


FIG. 1.

Plaintiff's Exhibit II.

The defendant admitted that whatever it had done in regard to the making, selling or using the cars in question claimed to be an infringement, was done without the license of the plaintiff.

This was all the testimony introduced and thereupon the case was argued and submitted to the Court for decision, and the Court having considered the same, announced that its decision would be in favor of the defendant, on the ground that the design patented by the letters patent sued on, did not require the exercise of invention for its production, and that the patent was void for want of invention; to which announcement, ruling and decision, counsel for plaintiff duly excepted, and the exception was allowed.

Thereupon the Court instructed counsel to prepare findings of fact and conclusions of law to be submitted to the Court for its signature, and afterwards said findings were prepared by counsel and signed by the Court, and are in the words and figures following, to-wit:

Findings.

This cause came on for trial on the 20th day of March, A. D. 1895, before the Court sitting without a jury, a jury having been waived by the parties. J. H. Miller, Esq. appeared as attorney for the plaintiff and John L. Boone, Esq. appeared as attorney for the defendant; and the cause having been tried, argued and submitted to the Court for its consideration and decision, and special findings of fact having been requested by the parties, and the Court having duly considered the case, finds the following as special findings of fact in the case, to-wit:

I.

That at all the times mentioned in the pleadings the defendant was a corporation organized and existing under and by virtue of the laws of the State of California, and having its principal place of business at the city of Stockton, in the county of San Joaquin, State of California, in the Northern District of California.

II.

That heretofore, to-wit. Prior to June 22d, 1891, plaintiff, John Hammond, by his own industry, genius, efforts and expense, conceived and devised and produced a new and original design for a manufacture, to-wit: a new, useful and original shape and configuration of a car body; that the same consisted and does consist of a car body distinguished by its peculiar shape and configuration, having a central rectangular enclosed compartment or section, and at each end thereof, symmetrically arranged skeleton or open-work rectangular sections within which are delineated seats, lying lengthwise and crosswise of the car, the whole being surmounted by a horizontal roof surface, while at each end of the car floor is a vertical dasher and beneath the flooring are seen the trucks; the whole of the aforesaid car body being suitably ornamented or embellished. All of which more fully and at large appears from the letters patent issued therefor, and referred to in the pleadings herein; which said letters patent are hereby referred to and by such reference made a part hereof.

III.

That the said design had not been known or used by others before the conception, devising and production thereof by said plaintiff, nor patented nor described in any printed publication; nor had the same been in use in this country for two years prior to the application for a patent therefor by said plaintiff.

IV.

That thereafter, to-wit: on June 22nd, 1891, said plaintiff made application to the Commissioner of Patents of the United States, for the issuance to him of letters patent for said design, and in said application elected the term of 14 years as the term of such letters patent as might be granted to him on the said application that such proceedings were duly and regularly had and taken in the matter of the said application, that thereafter, to-wit: on September 15th, 1891, letters patent of the United States were issued and delivered to plaintiff for said design, purporting to grant and secure to him, his heirs and assigns, for the full term of fourteen years from said last-named day, the exclusive right to make, use and vend the said design throughout the United States of America, and the Territories thereof.

V.

That said letters patent were issued in due form of law, under the seal of the Patent Office of the United States, and were signed by the Secretary of the Interior and countersigned by the Commissioner of Patents of the United States, and are numbered 21,042, and bear date September 15th, 1891.

VI.

That, prior to the issue of said letters patent, all proceedings were had and taken in the Patent Office of the United States, which are required by law to be had and taken prior to the issuance of letters patent for designs.

VII.

That, ever since the issuance of said letters patent, the plaintiff has been, and is now, the owner and holder of said letters patent and of all the rights, liberties and privileges by them granted, and has made and sold the car bodies described and claimed in said patent, and has always marked on each one thereof the word "patented," with the date and number of his said patent.

VIII.

That, notwithstanding the premises, and well knowing that the plaintiff had secured said letters patent, and in violation of the exclusive rights claimed thereunder by the plaintiff, said defendant at the City of Stockton, and elsewhere in the State of California, and Northern District thereof, since the 15th day of September, 1891, did apply the design described and claimed in said letters patent and colorable imitations thereof, to articles of manufacture, to-wit: car bodies, for the purpose of sale, and did sell and expose for sale said articles of manufacture, to-wit: car bodies, to which said designs and colorable imitations thereof had been applied by said defendant, without the license of plaintiff, whereby plaintiff was greatly injured and damaged, and sustained damages in the sum of two hundred and fifty dollars.

But in this behalf, the Court further finds that the said acts of the defendant were not in violation of any exclusive rights under said letters patent claimed by the plaintiff, nor in violation of any rights of the plaintiff under said letters patent, by reason of the fact that the said letters patent were and are void for want of invention displayed and exercised in producing the design described and claimed in said letters patent.

IX.

That prior to the date of plaintiff's alleged invention there was known and in use on the Market street Cable road, in the City and County of San Francisco, and State of California, a combination car consisting of a rectangular enclosed compartment or section, and at one end thereof, a skeleton or open-work rectangular section, within which were delineated seats lying lengthwise and crosswise of the car while at the opposite end was an ordinary car platform for ingress and egress of passengers, the whole being surmounted by a horizontal roof surface while at each end of the car floor was a vertical dasher, and beneath the flooring were seen the trucks; the whole of said car body being suitable, ornamented and embellished; the appearance of which is shown by Letters Patent No. 304,863, granted to Henry Root, on September 9th, 1884, a copy of which was offered in evidence by the plaintiff and marked (Plaintiff's Exhibit "I" "I,") and is hereby referred to for further description.

That in producing his car body, described and claimed in letters patent sued on, all that the plaintiff

did was to take the said old Market street combination car, cut a passageway through the side-seats of the open compartment, adjoining the closed compartment, so as to afford an entrance from the street through the said open compartment to the enclosed compartment; then to remove the rear platform attached to the open compartment with seats and passageways in all respects like the first mentioned open compartment, and that in making said substitution, trucks were placed underneath said substituted open compartment in all respects like the trucks which had previously been used under said prior open compartment.

That long prior to said substitution, horse-cars had been used, in which were a central closed compartment with a platform at each end, with passageways for ingress and egress of passengers from said central closed compartment to each of said platform and from thence to the street.

And as conclusions of law, from the foregoing facts, the Court finds:

That the said letters patent for a design for car bodies referred to herein, are void for want of invention, and that the defendant is entitled to judgment for costs of suit; and it is ordered that judgment be entered accordingly.

To which decision and findings the plaintiff duly excepts, and his exception in that behalf is hereby allowed.

(Signed.) J. McKENNA,
Judge.

Dated April 10th, A. D. 1895.

And thereupon the plaintiff duly excepted, and does now except to all that portion of the said findings of fact which finds that the said acts of the defendant were not in violation of any exclusive rights under said letters patent, claimed by the plaintiff, nor in violation of any rights of the plaintiff under said letters patent by reason of the fact that the said letters patent were and are void for want of invention, displayed and exercised in producing the design described and claimed by the said letters patent, which said exception was and is hereby allowed, and the plaintiff now tenders his bill of exceptions thereupon.

And plaintiff also excepted to the entire finding of fact, numbered "IX," and to each and every part thereof; which said exception was and is hereby allowed, and the plaintiff hereby tenders his bill of exceptions thereupon.

And plaintiff also excepted to all that portion of said findings of fact, which find that the plaintiff did not exercise the faculty of invention in producing his design for a car body, and that the patent issued therefor is void for want of invention, which exception was allowed, and the plaintiff now tenders his bill of exceptions thereupon.

And plaintiff also excepted and does now except to the conclusion of law found by the Court to the effect that the said letters patent for a design for car bodies referred to and sued on, are void for want of invention, which said exception was and is hereby allowed and the plaintiff now tenders his bill of exceptions thereupon.

And the plaintiff also excepted and does now except to all that portion of the conclusion of law made by the Court, to the effect that the defendant is entitled to judgment for costs of suit, and to that portion of it ordering that judgment be entered accordingly, which said exception was and is hereby allowed, and the plaintiff now tenders his bill of exceptions thereupon.

The foregoing bill of exceptions is hereby settled and allowed and certified to be a full, true and correct bill of exceptions and was prepared, served and settled within the time allowed by law.

April 20, 1895.

JOSEPH McKENNA,
Judge.

[Endorsed]: Service of the within Bill of Exceptions admitted this 11th day of April A. D., 1895. Jno. L. Boone, Atty. for Defendant. Filed April 22d, 1895. W. J. Costigan, Clerk. Estee & Miller, Attorneys for Plaintiff.

In the Circuit Court of the United States, in and for the Ninth Circuit, and Northern District of California.

JOHN HAMMOND,

Plaintiff,

vs.

STOCKTON COMBINED HARVESTER AND AGRICULTURAL WORKS (a Corporation),

Defendant.

No. 11,524.

Petition for Writ of Error.

John Hammond, the plaintiff in the above-entitled action, feeling himself aggrieved by the decision and findings of the court herein and the judgment entered thereupon on the 23rd day of April, A. D. 1895, whereby it was adjudged that plaintiff's patent sued upon herein was void, and that defendant was entitled to judgment for his costs, comes now, by Estee & Miller, his attorneys, and petitions said court for an order allowing him, the said plaintiff, to prosecute a writ of error to the Honorable the United States Court of Appeals, for the 9th Circuit, under and according to the laws of the United States in that behalf made and provided; and also, that an order be made fixing the amount of security which the plaintiff shall give and furnish upon said writ of error, and that upon the giving of such security, all further proceedings in this court be suspended, stayed and superseded until the determination of the said writ of error, by the said United States Circuit Court of Appeals for the said Ninth Circuit.

And your petitioner will ever pray, etc.

ESTEE & MILLER,
Attorneys for Plaintiff.

[Endorsed]: Filed April 25, 1895. W. J. Costigan, Clerk. By W. B. Beaizley, Deputy Clerk.

In the United States Circuit Court of Appeals, for the Ninth Circuit.

JOHN HAMMOND,
Plaintiff in Error,
vs.
STOCKTON COMBINED HARVESTER AND AGRICULTURAL WORKS (a Corporation),
Defendant in Error.

Assignment of Errors.

Now comes John Hammond, plaintiff in error herein, by Estee & Miller, his attorneys and counsel, and specifies the following as the errors upon which he will rely, and which he will urge upon his writ of error in the above-entitled action, to-wit:—

I.

That the said Circuit Court of the United States for the Northern District of California, erred in finding as a fact that the acts of the defendant alleged in the complaint to be an infringement, were not in violation of any exclusive rights under the letters patent sued on, nor in violation of any rights of the plaintiff under said letters patent, by reason of the fact that said letters patent were and are void for want of invention displayed and exercised in producing the design described and claimed by said letters patent.

II.

That the said Circuit Court of the United States for the Northern District of California, erred in finding as a fact the following, which is numbered "IX" in the findings of fact.

"That prior to the date of plaintiff's alleged inven-
"tion, there was known and in use on the Market-
"street cable road, in the City and County of San
"Francisco, and State of California, a combination
"car consisting of a rectangular enclosed compart-
"ment, or section, and at one end thereof a skeleton
"or open-work rectangular section within which were
"delineated seats lying lengthwise and crosswise of
"the car, while at the opposite end was an ordinary
"car platform for ingress and egress of passengers,
"the whole being surmounted by a horizontal roof
"surface, while at each end of the car floor was a ver-
"tical dasher, and beneath the flooring was seen the
"trucks, the whole of said car body being suitably or-
"namented and embellished, the appearance of which
"is shown by Letters Patent No. 304,863, granted to
"H. Root on September 9th, 1884; a copy of which
"was offered in evidence by the plaintiff and marked
"'Plaintiff's Exhibit II,' and is hereby referred to for
"further description.

"That in producing his car body, described and
"claimed in letters patent sued on, all that the plain-
"tiff did was to take the old Market street combina-
"tion car, cut a passageway through the side seats
"of the open compartment adjoining the closed com-
"partment so as to afford an entrance from the street
"through the said open compartment to the enclosed

" compartment; then to remove the rear platform at-
" tached to the open compartment and substitute in its
" place an open compartment with seats and passage-
" ways in all respects like the first-mentioned open com-
" partment, and that in making said substitution
" trucks were placed underneath said substituted open
" compartment, in all respects like the trucks which
" had previously been used under said prior open
" compartment.

" That long prior to said substitution, horse-cars
" had been used in which were a central closed com-
" partment with a platform at each end, with passage-
" ways for ingress and egress of passengers from said
" central closed compartment to each of said plat-
" forms, and from thence to the street."

III.

Said Circuit Court of the United States, for the Northern District of California, erred in finding as a fact that the plaintiff did not exercise the faculty of invention in producing his design for a car body, described and claimed in the patent sued on.

IV.

Said Circuit Court of the United States, for the Northern District of California, erred in finding as a conclusion of law that the letters patent for a design for car bodies sued on herein, are void for want of invention.

V.

Said Circuit Court of the United States, for the Northern District of California, erred in finding as a

conclusion of law that the defendant is entitled to judgment for costs of suit, and in ordering that judgment be entered accordingly.

All of which is respectfully submitted.

ESTEE & MILLER,
Attorneys for Plaintiff in Error.

[Endorsed]: Filed April 25, 1895. W. J. Costigan, Clerk. By W. B. Beaizley, Deputy Clerk.

At a stated term, to-wit: the February Term, A. D. 1895, of the Circuit Court of the United States of America, of the Ninth Judicial Circuit, in and for the Northern District of California, held at the courtroom, in the City and County of San Francisco, on Thursday the 25th day of April, in the year of our Lord one thousand eight hundred and ninety-five.

Present: the Honorable JOSEPH MCKENNA, Circuit Judge.

JOHN HAMMOND,

vs.

STOCKTON COMBINED HARVESTER AND AGRICULTURAL WORKS (a Corporation), } No. 11,524.

Order Allowing Writ of Error, Order Fixing Bond on Writ of Error, and Order Allowing Withdrawal of Exhibits.

Upon motion of John H. Miller, Esq., counsel for plaintiff, and upon filing a petition for writ of error, and assignment of errors, it is ordered that the plain-

tiff be allowed to prosecute a writ of error herein, to the United States Circuit Court of Appeals, for the Ninth Circuit, pursuant to the statutes and laws of the United States in that behalf made and provided. It is further ordered that the amount of the bond upon said writ of error be fixed at the sum of five hundred dollars, and that upon the giving of said bond, all further proceedings in this court herein be stayed until the determination of said writ of error by said United States Circuit Court of Appeals for the Ninth Circuit.

It is further ordered that the following original exhibits, viz: Plaintiff's Exhibits "B," "C," "D," and "E," and Defendant's Exhibits "1" and "2," be allowed to be withdrawn from the files of this cause and transmitted to the said Court of Appeals as a part of the record upon writ of error herein, said exhibits to be delivered to the Clerk of said Court of Appeals and to be returned to the files of this cause in this court upon the final determination of said writ of error by said United States Circuit Court of Appeals.

In the Circuit Court of the United States, in and for the Ninth Circuit, and Northern District of California.

JOHN HAMMOND,
Plaintiff,
vs.
STOCKTON COMBINED HARVESTER AND AGRICULTURAL WORKS, (a Corporation),
Defendant.
No. 11,524.

Bond on Writ of Error.

Know All Men By These Presents: That we, John Hammond, as principal, and Fred. Gottfried and James H. Mooney, as sureties, are held and firmly bound unto the Stockton Combined Harvester and Agricultural Works, a corporation, in the penal sum of five hundred ($500) dollars, to be paid to the said Stockton Combined Harvester and Agricultural Works or its assigns; for which payment well and truly to be made, we bind ourselves, our heirs, executors, administrators jointly and severally, firmly by these presents.

Sealed with our seals and dated this 26th day of April, in the year of our Lord one thousand eight hundred and ninety-five.

Whereas, lately at a session of the Circuit Court of the United States for the Northern District of California, in a certain action at law depending in said court between John Hammond, plaintiff, and the Stockton Combined Harvester and Agricultural Works, (a corporation), defendant, a final judgment was rendered against the said plaintiff for the sum of $91 10-100 dollars, costs of suit, and the said plaintiff having ob-

tained from said court a writ of error to reverse the judgment aforesaid, and a citation directed to the said Stockton Combined Harvester and Agricultural Works is about to be issued, citing and admonishing it to be and appear at a term of the United States Circuit Court of Appeals for the Ninth Circuit, to be holden in San Francisco.

Now, the condition of the above obligation is such, that if the said John Hammond shall prosecute his writ of error to effect and shall answer all damages and costs that may be awarded against him if he fail to make his plea good, then the above obligation to be void, otherwise to remain in full force and virtue.

JOHN HAMMOND, (Seal.)
FRED GOTTFRIED, (Seal.)
J. H. MOONEY. (Seal.)

Sealed and delivered in the presence of

LINCOLN SONNTAG.

UNITED STATES OF AMERICA,
Northern District of California. } ss.

Fred Gottfried and James H. Mooney, being each duly sworn, each for himself deposes and says: That he is a freeholder in the said Northern District of California, and is worth the sum of five hundred dollars, exclusive of property exempt from execution over and above all his debts and liabilities.

FRED GOTTFRIED.
J. H. MOONEY.

Subscribed and sworn to before me, this 26th day of April, A. D. 1895.

(Notarial Seal.) LINCOLN SONNTAG,
Notary Public in the City and County of San Francisco, State of California.

The above bond is satisfactory to defendants.

April 26th, 1895. JNO. BOONE,
Atty. for Defendants.

The foregoing bond is approved.

JOSEPH McKENNA,
Circuit Judge.

[Endorsed]: Filed April 26th, 1895. W. J. Costigan, Clerk.

In the Circuit Court of the United States, Ninth Judicial Circuit, Northern District of California.

JOHN HAMMOND,
vs.
STOCKTON COMBINED HARVESTER AND AGRICULTURAL WORKS (a Corporation). } No. 11,524.

Certificate to Transcript.

I, W. J. Costigan, Clerk of the Circuit Court of the United States of America, of the Ninth Judicial Circuit, in and for the Northern District of California, do hereby certify the foregoing fifty-eight written and printed pages, numbered from 1 to 58 inclusive, to be a full, true and correct copy of the record, papers and proceedings in the above and therein entitled cause, as the same remain of record and on file in the office of the Clerk of said court, and that the same constitute the return to the annexed writ of error.

I further certify that the cost of the foregoing transcript of record is the sum of $37, and that said sum of $37 was paid by J. Hammond, appellant.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of said Circuit Court, this 3rd day of February, A. D. 1895.

[L. S.] W. J. COSTIGAN,

Clerk U. S. Circuit Court, Northern District of California.

Writ of Error.

UNITED STATES OF AMERICA—SS.

The President of the United States, to the Honorable, the Judges of the Circuit Court of the United States, for the Northern District of California, greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said Circuit Court, before you, or some of you, between John Hammond, plaintiff in error, and Stockton Combined Harvester and Agricultural Works, defendant in error, a manifest error hath happened, to the great damage of the said John Hammond, plaintiff in error, as by his complaint appears.

We, being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the United States Circuit Court of Appeals, for the Ninth Circuit, together with this writ, so that you have the same at the City of San Francisco, in the State of California, on the third day of May next, in the said Circuit Court of Appeals, to be then and there held, that the record and proceed-

ings aforesaid being inspected, the said Circuit Court of Appeals may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States, should be done.

Witness the Honorable MELVILLE W. FULLER, Chief Justice of the Supreme Court of the United States, the 26th day of April, in the year of our Lord one thousand, eight hundred and ninety-five.

[Seal.] W. J. COSTIGAN,
Clerk of the United States Circuit Court, for the Ninth Circuit, Northern District of California.

Allowed by—

JOSEPH McKENNA,
Circuit Judge.

Service of within writ and receipt of a copy thereof is hereby acknowledged this 26th day of April, 1895.

JNO. L. BOONE,
Atty. for Deft. in Error.

[Endorsed]: No. 11,524. United States Circuit Court of Appeals, for the Ninth Circuit. John Hammond, Plaintiff in Error, vs. Stockton Combined Harvester and Agricultural Works, Defendant in Error. Original Writ of Error. Filed April 26, 1895. W. J. Costigan, Clerk U. S. Circuit Court, N. D., Cal.

The answer of the Judges of the Circuit Court of the United States, of the Ninth Judicial Circuit, in and for the Northern District of California.

The record and all proceedings of the plaint whereof mention is within made, with all things touching the same, we certify under the seal of our said court, to the United States Circuit Court of Appeals, for the Ninth Circuit, within mentioned, at the day and place within contained, in a certain schedule to this writ annexed, as within we are commanded.

By the Court.

[Seal.] W. J. COSTIGAN,
Clerk.

Citation.

UNITED STATES OF AMERICA—ss.

The President of the United States, to Stockton Combined Harvester and Agricultural Works, greeting:

You are hereby cited and admonished to be and appear at a United States Circuit Court of Appeals, for the Ninth Circuit, to be holden at the City of San Francisco, in the State of California, on the third day of May next, pursuant to a writ of error filed in the Clerk's office of the Circuit Court of the United States, for the Northern District of California, in that certain action, numbered 11,524, in which John Hammond is plaintiff in error, and you are defendant in error to show cause, if any there be, why the judgment rendered against the said plaintiff in error as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the Honorable JOSEPH MCKENNA, Judge of the United States Circuit Court in and for the North-

ern District of California, this 26th day of April, A. D. 1895.

JOSEPH McKENNA,
Judge U. S. Circuit Court, Northern District of California.

[Endorsed]: No. 11,524. U. S. Circuit Court of Appeals for the Ninth Circuit. John Hammond, Plff. in Error vs. Stockton Combined Harvester and Agricultural Works, Deft. in Error. Original Citation. Filed April 26, 1895. W. J. Costigan, Clerk U. S. Circuit Court, N. D., Cal. By W. B. Beaizley, Deputy Clerk. Service of within writ, and receipt of a copy thereof is hereby acknowledged this 26th day of April, 1895. Jno. L. Boone, Atty. for Deft. in Error.

[Endorsed]: No. 231. U. S. Circuit Court of Appeals for the Ninth Circuit. John Hammond, Plaintiff in Error, vs. Stockton Combined Harvester and Agricultural Works, Defendant in Error. Transcript of Record. Upon Writ of Error to the Circuit Court of the United States for the Northern District of California.

Filed May 3rd, 1895.

F. D. MONCKTON,
Clerk.